**(2002) 05 KAR CK 0001**

**In the Karnataka High Court**

**Case No :** Criminal Petition No. 1272 of 2001

N.K. Ramaswamy Iyengar and Another — APPELLANT

Vs

Bangalore District and Bangalore Rural District Co-operative Central Bank Limited — RESPONDENT

**Date of Decision :** 28-05-2002

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

**Citation :** (2002) CriLJ 3502 : (2002) ILR (Kar) 3936 : (2002) 4 RCR(Criminal) 494

**Hon'ble Judges :** S.R. Bannurmath, J

**Bench :** Single Bench

**Advocate :** C.V. Nagesh, for the Appellant; Vittal Shetty and Associated, for the Respondent

**Final Decision :** Dismissed

# Judgement

S.R. Bannurmath, J.—This petition is filed u/s 482, Criminal Procedure Code for quashing the proceedings in P.C.R. No. 1111 of 1999 (C.C. No. 30083 of 2000), on the file of the XIII Additional C.M.M., Bangalore.

2. The brief facts for consideration are as follows:

A cheque for a sum of Rs. 20 lakhs issued by Vyalikaval House Building Co-operative Society Limited, Bangalore, bearing signatures of the petitioners issued to the respondent-Bangalore District and Bangalore Rural District Co-operative Central Bank Limited, Bangalore, came to be dishonoured with an endorsement--insufficient funds. As such, the payee of the cheque (respondent), after complying with the requirements of issue of notice for settlement, lodged a complaint u/s 200, Criminal Procedure Code against the petitioners seeking prosecution for an offence punishable u/s 138 of the Negotiable Instruments Act. The learned Magistrate after taking the cognizance, recorded the sworn statement of one Sri V. Thyagaraja, Manager of the payee-Bank and by the order dated 22.1.2000, issued process against the petitioners.

3. Challenging the action of taking cognizance and issue of process, the petitioners approached the learned Sessions Judge in Criminal Revision Petition No. 150 of 2000. The learned Sessions Judge dismissed the petition and hence the present criminal petition u/s 482, Criminal Procedure Code.

4. The main contention of the learned Counsel for the petitioners is that the payee of the dishonoured cheque is an incorporeal person. It is contended that u/s 142 of Negotiable Instruments Act, the Court can take cognizance of the offence punishable under the Act, only upon the receipt of a complaint by the payee of the cheque or the holder induce course. It is contended that from the averments made in the complaint, the payee-Bank had authorised its Managing Director to present the complaint. But the complaint is signed and presented by one V. Thygaraja, stated to be the Manager of the payee-Bank. It is contended that since the Manager is an unauthorised person as per the averments in the complaint itself, presentation of such complaint, taking cognizance of the same and ordering the registration of a case and issuing process, are all illegal and unsustainable in law.

5. In this regard, the learned Counsel has relied upon the following pronouncements--

Ruby Leather Exports v. K. Venu Rep. Vandana Chemicals Etc. 1994(1)Crimes 820 .

Satish and Company Vs. S.R. Traders and Others, (Andhra Pradesh High Court).

M/s. Credential Financial Ltd. Vs. State of Maharashtra and others, (Bombay High Court).

6. On the other hand, arguing in support of the action, Counsel for the respondent contended that no doubt under the bye-laws of the respondent-Bank and the authorisation, it is the Managing Director who is authorised to file the complaint. But since the Managing Director himself has authorised the present Manager, Sri V. Thyagaraja by an authorisation letter dated 19.11.1999 to file the complaint, there is no illegality in filing of the complaint. In this regard, he has relied upon the decision of this Court in the case of P.A. Verghese v. Campion Business Associates Private Limited and Ors. 1998(2) Crimes 85.

7. I have heard the learned Counsels in detail and perused the records of the case as well as the decisions relied upon by both the sides.

8. It is to be noted that the word ''complainant'' is not defined in the Criminal Procedure Code. It is also well settled that any person can set the law in motion except in case where the statute has specifically provided otherwise. The word ''person'' as defined in Indian Penal Code includes "any company or association or body of persons, whether incorporate or not". u/s 142 of the Negotiable Instruments Act: "No Court shall take cognizance of any offence punishable u/s

 

138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course". It is well settled that when the payee or the holder in due course is an incorporate body, since it cannot represent itself physically, it would be represented by an authorised person on its behalf. It is to be noted that the Act does not provide any mode as to how a complaint can be filed by and on behalf of a Company. u/s 14'' of the Negotiable Instruments Act, if the offence is u/s 138 of the Act, it is provided that though "every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the Company, as well as the company, shall be deemed to be guilty of the offence and liable to be proceeded against". Proviso to Section 141(1) further states that nothing contained in this sub-section si all render any person liable to punishment if he proves that the offence was committed without his knowledge. Sub-section (2) further provides that in case it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty. Under the Explanation, the word ''Company'' has been defined as "any body corporate and includes a firm or other association of individuals". Thus from reading of Section 141 of the Act, so far as firm or company or corporate body is concerned, a person who was incharge or who was responsible to the company, shall be deemed to be guilty of the offence.

9. On the basis of the Section 141 of the Act though it contemplates a case where a company is an accused, applying the same analogy even in case of a company being the complainant it can be said that a person who can file a complaint on behalf of the company would be a person who is incharge of or was responsible to the company. In other words he must be a person whose action would be binding on the company. Sections 26 and 27 of the Negotiable Instruments Act also deal with similar situation in relation to promissory notes, bills, cheques, etc. u/s 26 of the Act "every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque". From these sections it is clear that such a person to bind the corporation or a company, should be a person incorporated so as to bind such a corporation. Hence, the principle evolved is that a duly authorised agent can also file a complaint, suit or any legal proceedings in the competent Court of law. In other words he must be such a person that his action would bind the company which he represents whether he is called as a manager, secretary or by any other designation. In fact, corporations or companies being inanimate legal persons, necessarily should act through such authorised physical persons and on the basis of such authority, can sign the pleadings or defend proceedings for and on behalf of the corporation or a company. This is what the law laid down in the case of Satish and Company and Ruby Leather Exports (supra). In the instant case, no doubt, authorisation as per the complaint is to the Managing Director of the Bank. It is also not in

 

dispute that the Managing Director himself has authorised the Manager by the authorisation letter dated 19.11.1999 to file the complaint and thus both the Manager and the Managing Director who are responsible, are answerable to the company, are persons who can file such complaint. The learned Sessions Judge has taken into consideration this aspect and the law laid down in this regard. Since I am in agreement with the conclusion arrived at by the learned Judge, I find no merits in the contentions of the learned Counsel for the petitioner that the complaint is filed by an incompetent person.

10. Taking into consideration, the facts and circumstances of the case, I am of the view that the present complaint filed by the Bank represented by the Manager V. Thyagaraja, a person duly authorised by the Managing Director is thus has all the authorisation and is a person answerable to the company and hence I see no merits in the contentions of the learned Counsel in this behalf. I hold that present complaint filed by the Manager is maintainable one.

Hence the Criminal Petition is rejected.